

§ 120.850

CDC may submit its application to the SBA field office in which it is most active. The SBA field office will send the application with its recommendation to the AA/FA for a final decision.

(g) *Acceptance into Program.* When determining a CDC's application, SBA will consider the CDC's ability to work with the local SBA office and the quality of past performance.

(h) *Program period.* The PCLP pilot program ends on October 1, 2000.

[64 FR 26274, May 14, 1999]

ASSOCIATE DEVELOPMENT COMPANIES (ADCs)

§ 120.850 ADC functions.

(a) An ADC must support local economic development efforts. An ADC may package, close, and service loans for a CDC under a written contract approved by SBA. Such contracts must meet Service Provider criteria, and specify the rights and responsibilities of the parties (including payment terms). The CDC remains solely responsible to SBA for the processing, closing, and servicing of the loan. It may not charge the Borrower a higher fee because it is using the ADC's services.

(b) An ADC must operate in accordance with statutes, regulations, policy notices, SBA's Standard Operating Procedures (SOPs), and the information in its application. It must supply to SBA current and accurate information about all certification and operational requirements, and maintain the records required by SBA.

§ 120.851 ADC eligibility and operating requirements.

(a) An ADC must demonstrate to SBA and maintain the following:

- (1) Adequate management ability;
- (2) A Board of Directors meeting at least quarterly and chosen from the membership by the members;
- (3) A professional staff, including at least one qualified full-time professional with small business lending experience available during regular business hours; and
- (4) A budget or financial statements showing the financial capability and

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funding to sustain continuing operations.

(b) An ADC may contract out for staff services only if SBA gives prior approval. The contract, subject to SBA audit, may not be self-serving, and compensation must be reasonable and customary.

§ 120.852 Suspension and revocation of ADCs.

SBA may require corrective action, or the AA/FA may suspend or revoke ADC status upon written notice stating the reasons therefore at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include violations of applicable statutes, regulations or published SBA policies and procedures. An ADC may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

ETHICAL REQUIREMENTS

§ 120.855 CDC and ADC ethical requirements.

CDCs, ADCs and their Associates must act ethically and exhibit good character. They must meet all of the ethical requirements of §120.140. In addition, they are subject to the following:

(a) Any benefit flowing to an Associate or his or her employer from activities as an Associate must be merely incidental (this requirement does not prevent an Associate or an Associate's employer from engaging in a business relationship with the CDC and/or the Borrower in the regular course of business, including providing interim financing or Third-Party loans); and

(b) Unless waived by SBA for good cause, an Associate may not be an officer, director, or manager of more than one CDC or ADC (except that the membership or Board of Directors of a broader-based CDC may include a member or director of a local CDC within its Area of Operations).

Small Business Administration

§ 120.871

PROJECT ECONOMIC DEVELOPMENT GOALS

§ 120.860 Required objectives.

A Project must achieve at least one of the economic development objectives set forth in § 120.861 or § 120.862.

§ 120.861 Job creation or retention.

A Project must create or retain one Job Opportunity for every \$35,000 guaranteed by SBA.

§ 120.862 Other economic development objectives.

A Project that achieves any of the following community development or public policy goals is eligible if the CDC's overall portfolio of 504 loans, including the subject loan, meets or exceeds the CDC's required Job Opportunity average. Loan applications must indicate how the Project will meet the specified economic development objective.

(a) Community Development goals:

(1) Improving, diversifying or stabilizing the economy of the locality;

(2) Stimulating other business development;

(3) Bringing new income into the community;

(4) Assisting manufacturing firms (Standard Industrial Classification Manual (SIC) Codes 20-49); or

(5) Assisting businesses in Labor Surplus Areas as defined by the Department of Labor.

(b) Public Policy goals:

(1) Revitalizing a business district of a community with a written revitalization or redevelopment plan;

(2) Expanding exports;

(3) Expanding Minority Enterprise development (See § 124.105(b) for minority groups who qualify for this description);

(4) Aiding rural development;

(5) Increasing productivity and competitiveness (retooling, robotics, modernization, competition with imports);

(6) Modernizing or upgrading facilities to meet health, safety, and environmental requirements; or

(7) Assisting businesses in or moving to areas affected by Federal budget reductions, including base closings, either because of the loss of Federal con-

tracts or the reduction in revenues in the area due to a decreased Federal presence.

[61 FR 3235, Jan. 31, 1996, as amended at 64 FR 2118, Jan. 13, 1999]

LEASING POLICIES SPECIFIC TO 504 LOANS

§ 120.870 Leasing Project Property.

(a) A Borrower may use the proceeds of a 504 loan to acquire, construct, or modify buildings and improvements, and/or to purchase and install machinery and equipment located on land leased to the Borrower by the CDC or an unrelated lessor if:

(1) The remaining term of the lease, including options to renew, exercisable only by the lessee, equals or exceeds the term of the Debenture;

(2) The Borrower assigns its interest in the lease to the CDC with right of reassignment to SBA; and

(3) The 504 loan is secured by a recorded lien against the leasehold estate and other collateral as necessary.

(b) If a CDC leases property to a small business, the rent paid by the small business during the term of the Debenture must be enough to pay principal and interest on all debt incurred by the CDC to finance the Project, and all related expenses. The rent also may include a reasonable return on the CDC's investment.

(c) If the Project is for new construction, the Borrower may lease long term up to 20 percent of the Rentable Property in the Project to one or more tenants if the Borrower immediately occupies at least 60 percent of the Rentable Property, plans to occupy within three years some of the remaining space not immediately occupied and not leased long term, and plans to occupy all of the remaining space not leased long term within ten years.

[61 FR 3235, Jan. 31, 1996, as amended at 64 FR 2118, Jan. 13, 1999]

§ 120.871 Leasing part of an existing building to another business.

(a) The costs of interior finishing of space to be leased out to another business are not eligible Project costs.